

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Southwestern Bell Telephone Company	)	CC Docket No. 97-158
	)	CCB/CPD 97-67
Tariff F.C.C. No. 73	)	Transmittal No. 2633

**REPLY COMMENTS OF U S WEST, INC.**

U S WEST, Inc. ("U S WEST") hereby submits its reply comments in support of Southwestern Bell Telephone Company's ("SWBT") Petition for Reconsideration of the Federal Communications Commission's ("Commission") recent Order rejecting the above-referenced transmittal.<sup>1</sup>

SWBT and U S WEST submitted substantial evidence in the record of this proceeding demonstrating that many segments of the interstate access market are highly competitive. The competition that currently exists in the access market, as well as the pro-competitive and deregulatory goals of the Telecommunications Act of 1996 ("1996 Act"), justifies the removal of unnecessary regulatory constraints on incumbent local exchange carriers ("LEC"). Accordingly, the Commission should allow incumbent LECs to offer their customers alternatives to "plain vanilla"

<sup>1</sup> In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, CC Docket No. 97-158, Transmittal No. 2633, Order Concluding Investigation and Denying Application for Review, FCC 97-394, rel. Nov. 14, 1997 ("Competitive Response Tariff Rejection Order"). Public Notice, Southwestern Bell Telephone Company Seeks Reconsideration of Order Rejecting Tariff F.C.C. No. 73, Transmittal No. 2633 Raising Issues of Competitive Necessity, DA 97-2668, rel. Dec. 22, 1997. SWBT Petition for Reconsideration filed Dec. 15, 1997.

generic tariff offerings, including the ability to respond competitively to customers' requests for proposals ("RFP") and to provide integrated service packages tailored to meet their customers' needs.

It is imperative that the Commission move quickly to adopt a regulatory structure which allows incumbent LECs to fashion appropriate responses to burgeoning competition in the access market. In their separate statements to the Competitive Response Tariff Rejection Order, Commissioners Furchtgott-Roth and Powell suggested that the issue of additional pricing flexibility for incumbent LECs should be addressed in the context of the pending Access Charge Reform proceeding. U S WEST would not oppose the grant of regulatory relief in the broader context of a comprehensive rulemaking, provided that such a proceeding is not merely a mechanism for needlessly delaying the implementation of pro-competitive measures.

I. THE COMPETITION THAT CURRENTLY EXISTS IN THE INTERSTATE ACCESS MARKET JUSTIFIES THE REMOVAL OF UNNECESSARY REGULATORY CONSTRAINTS ON INCUMBENT LECs

There is substantial evidence in the record of this proceeding, including extensive evidence submitted by the United States Telephone Association ("USTA") in its comments, demonstrating that incumbent LECs today face competition that is emerging, and in the case of high-cap access services for high-volume customers, is full-blown in many markets.<sup>2</sup> None of the opposing parties attempt to refute the

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<sup>2</sup> See, e.g., USTA Comments, filed Jan. 12, 1998 at 2-4; SWBT Direct Case, filed Aug. 13, 1997 at 8; Comments of U S WEST, Inc. on SWBT's Direct Case filed Aug. 28, 1997 at 13 ("U S WEST Comments").

market data previously submitted by SWBT and U S WEST. Instead, AT&T Corp. ("AT&T") argues that the Commission correctly gave no weight to the evidence submitted by U S WEST which demonstrates the competitiveness of the access market in general.<sup>3</sup> AT&T is wrong. U S WEST's evidence of competition is directly relevant to this proceeding because it refutes the outdated assumption that incumbent LECs have the ability to exert market power in the access market.<sup>4</sup> Therefore, the Commission should have considered U S WEST's submission and acknowledged the burgeoning competition in the interstate access market.

It is truly ironic that AT&T supports the Commission's finding that the interstate access market lacks competitiveness, given that AT&T itself issued one of the RFPs to which SWBT is attempting to respond.<sup>5</sup> Indeed, AT&T's RFP letter noted that SWBT's tariffed rates are "significantly higher than those of other access providers in the area."<sup>6</sup> The fact that AT&T explicitly recognized the presence of competitive access providers and apparently awarded the business covered by its RFP to a carrier other than SWBT is incontrovertible evidence of competition. Because of AT&T's prior conduct initiating the RFP, its current position that there is insufficient evidence of competition in the markets where the RFPs were issued would in all likelihood be barred by the doctrine of equitable estoppel in a court of

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<sup>3</sup> AT&T Opposition to SWBT Petition for Reconsideration, filed Jan. 12, 1998 at 5.

<sup>4</sup> Competitive Response Tariff Rejection Order ¶ 54.

<sup>5</sup> Id. ¶ 10.

<sup>6</sup> Id.

law.<sup>7</sup>

Further, the same considerations that led the Commission to give AT&T pricing flexibility to meet competition – long before AT&T was found to face substantial competition, much less to be non-dominant – are clearly present today with respect to the access market. The opposing parties argue that a showing of “substantial competition” should be required because RFP responses are merely contract tariffs.<sup>8</sup> This argument is contrary to the Commission’s precedent allowing AT&T to engage in competition before the interexchange market was fully competitive. Indeed, the Commission first applied the competitive necessity doctrine to AT&T’s private line and special access services in 1984.<sup>9</sup> Moreover, the Commission allowed AT&T’s generally available RFP response tariff – Tariff 15 – to take effect based on the competitive necessity doctrine before AT&T was found to face substantial competition and allowed to file contract tariffs. Thus, the contract tariff decisions cited by the opposing parties are inapplicable.

The evidence in the record of this proceeding demonstrates that, like the interexchange services market in the 1980s, incumbent LECs today face real

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<sup>7</sup> Equitable estoppel is the effect of voluntary conduct of a party whereby it is precluded from asserting rights against another party who has justifiably relied upon such conduct and changed its position so that the latter party will suffer injury if the former party is allowed to repudiate the conduct. See American Bank & Trust Co. v. Trinity Universal Ins. Co., 205 So.2d 35, 40 (1967).

<sup>8</sup> MCI Opposition to Petition for Reconsideration, filed Jan. 12, 1998 at 7-8; Opposition of Time Warner Communications Holdings Inc., filed Jan. 12, 1998 at 5 n.7 (“Time Warner Opposition”).

<sup>9</sup> In the Matter of Private Line Rate Structure and Volume Discount Practices, Report and Order, 97 F.C.C.2d 923 (1984).

competition in many quarters of the interstate access market. Further, under the 1996 Act, interstate access markets are indisputably open to competition.

Consistent with the Commission's prior treatment of AT&T, should not continue to be handcuffed in responding to competition that exists in many segments of the interstate access market until a showing can be made that all other markets are fully competitive. Accordingly, incumbent LECs should have the flexibility to respond competitively to customers' RFPs and to provide integrated service packages tailored to meet their customers' needs.

## II. ALLOWING INCUMBENT LECs TO ENTER INTO CUSTOMER-SPECIFIC ARRANGEMENTS WILL PRODUCE SIGNIFICANT PUBLIC INTEREST BENEFITS

The expert economic analyses submitted in this proceeding demonstrate that allowing incumbent LECs to enter into customer-specific arrangements as an alternative to "plain vanilla" generic tariff offerings will produce significant public interest benefits.<sup>10</sup> Indeed, it is self-evident that sophisticated business customers with individualized needs cannot adequately be served through "plain vanilla" generic tariff offerings that are designed for general consumption. Yet the opposing parties completely ignore this economic evidence and, instead, speculate on possible "strategic or predatory behavior" that incumbent LECs could engage in as a response to competition.<sup>11</sup> These unfounded claims – which draw no distinction between legitimate competitive responses and truly anti-competitive behavior – do

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<sup>10</sup> U S WEST Comments at Attachment Affidavit of Robert G. Harris at 7 ¶ 10 (Aug. 27, 1997); see also SWBT Petition for Reconsideration at Attachment Affidavit of Douglas R. Mudd at 4 (Dec. 15, 1997).

not provide a legitimate basis for denying incumbent LECs pricing flexibility to compete in the interstate access market. In any event, there are a number of other less extreme statutory and regulatory safeguards that will effectively prevent carriers from engaging in anti-competitive behavior.<sup>12</sup>

Moreover, seeking to ensure that new entrants succeed in the market by insulating them from competition generates false economic signals. As the Commission previously recognized, continued regulation of incumbents' offerings in the face of competition distorts the marketplace "by plac[ing] the incumbent LEC at a regulatorily-imposed disadvantage in competing for high-volume end users."<sup>13</sup> The Commission has learned from experience that new entrants that rely on government-mandated advantages will not be able to survive in a competitive market.<sup>14</sup> Thus, the protectionist policies advocated by the opposing parties will not promote true competition in the interstate access market.

For these reasons, the Commission should grant SWBT's Petition for

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<sup>11</sup> See, e.g., Time Warner Opposition at 9.

<sup>12</sup> See, e.g., 47 U.S.C. § 202(a) (prohibiting common carriers from making any unjust or unreasonable discrimination in rates); 47 U.S.C. § 201(b) (requiring rates for communications services to be just and reasonable).

<sup>13</sup> In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd. 21354, 21361 ¶ 8 (1996).

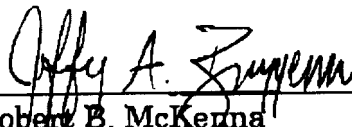
<sup>14</sup> For example, small interexchange carriers are fighting desperately to maintain the existing subsidy of local transport and tandem switching charges, claiming that reversion to prices which more closely reflect cost could drive them out of business. See, e.g., Joint Petition for Reconsideration filed by KLP, Inc. d/b/a Call-America and Yavapai Telephone Exchange, Inc., filed July 11, 1997, CC Docket No. 96-262.

Reconsideration of the Competitive Response Tariff Rejection Order and allow incumbent LECs to offer their customers alternatives to "plain vanilla" generic tariff offerings, including RFP tariffs and integrated service packages.

Respectfully submitted,

U S WEST, INC.

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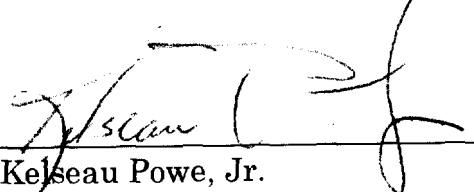
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January 22, 1998

## CERTIFICATE OF SERVICE

I, Kelseau Powe Jr., do hereby certify that on this 22<sup>nd</sup> day of January, 1998,  
I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.**  
to be served, via first-class United States Mail, postage prepaid, upon the persons  
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